ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Revision of Part 22 and Part 90	)	
of Commission's Rules to Facilitate	)	WT Docket No. 96-18
Future Development of Paging Systems	)	
	)	
Implementation of Section 309(j)	)	
of the Communications Act -	)	PP Docket No. 93-253
Competitive Bidding	)	

To: The Commission

COMMENTS OF
PREFERRED NETWORKS, INC.

By: Elizabeth R. Sachs
Terry J. Romine

Its Attorneys

Lukas McGowan Nace & Gutierrez, Chartered
1111 Nineteenth Street, N.W., Suite 1200
Washington, D.C. 20036
(202) 857-3500

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SUMMARY

Preferred Networks, Inc. ("PNI") again urges the Federal Communications Commission ("FCC") to rescind the suspension of applications for paging frequencies. At a minimum, PNI requests that the FCC equalize the treatment between Common Carrier Paging channel licensees, 929 MHz Private Carrier Paging ("PCP") channel licensees, and non-exclusive PCP lower band channel licensees.

PNI has extensive experience in consolidation of operations on the frequency 157.74 MHz. It, therefore, provides insight to the difficult and complex task of consolidating thousands of licensed facilities which have never enjoyed "exclusivity." PNI recommends that the Commission not adopt exclusive licensing in the non-exclusive PCP lower bands frequencies. Instead PNI suggests, similar to PCIA's proposal in its Petition for Rule Making filed in July 1994, that a cap on the number of new licensees be imposed when a shared frequency becomes licensed to its efficiency peak. Additionally, PNI urges the Commission to codify sharing requirements to reduce interference disputes and provide continued efficient use of the spectrum in these non-exclusive PCP lower bands.

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To: The Commission

COMMENTS OF PREFERRED NETWORKS, INC.

Preferred Networks, Inc. ("PNI"), pursuant to Section 1.415 of the rules and regulations of the Federal Communications Commission ("FCC" or "Commission") and by counsel, respectfully submits its comments in response to the Notice of Proposed Rule Making adopted February 8, 1996 by the Commission in the above-styled proceeding ("Notice").[1]

I. Introduction

A. The Company

PNI, a Delaware corporation, is a paging company with its headquarters in Norcross, GA. PNI, unlike other paging companies, is a carrier's carrier of exclusively wholesale one-way paging network services. The Company's customers purchase and resell the Company's network services to their subscribers. As of December 31, 1995, PNI had more than 40 customers, including four of the five largest paging service

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[1] Notice of Proposed Rule Making (FCC 96-52), WT Docket No. 96-18, PP Docket No. 93-253, 0 FCC Rcd __ (1996).

providers in the U.S. which collectively resold paging services on the Company's networks to over 153,000 subscribers. The cornerstone of PNI's business is the network it has developed on the shared Private Carrier Paging ("PCP") frequency, 157.74 MHz. PNI is licensed, or has applications pending, for facilities in 48 of the 50 larger U.S. metropolitan markets and adjacent areas. PNI also is licensed and operates on Common Carrier Paging ("CCP") frequencies, 931.2625 MHz, 158.10 MHz, and 152.84 MHz, and PCP frequencies, 462.85 MHz and 462.80 MHz in discrete geographic areas.

B. Immediate Relief from the Application "Freeze" Is Required

In the Notice, in anticipation of adoption of the various geographic-based licensing structures proposed, the Commission suspended the acceptance of applications for paging frequencies.[2] The Commission provided no relief from this application "freeze" to entities licensed on the non-exclusive PCP channels. The Commission's action could have an immediate, highly prejudicial impact on the implementation and development of PNI's national network. Although the Commission has sought comment on its proposed interim licensing procedures, it is uncertain when such procedures will be implemented. More critically, PNI anticipates that the relief which may be granted will be insufficient to permit PNI and other similarly-situated non-exclusive PCP licensees to conduct their ongoing day-to-day business.

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[2] The Commission has exempted licensees of nationwide paging frequencies from the freeze, and has provided some ability for CCP and 929 MHz PCP licensees to obtain minor modifications of their authorizations. The anti-competitive impact of this disparate treatment was detailed in PNI's earlier-filed comments on the Interim Licensing Proposal.

As the Commission is aware, paging is a dynamic service which must be sufficiently flexible to respond to the subscribers' needs. Paging companies compete head-to-head with one another. If a paging company is unable to respond to the coverage needs of existing or new customers on a daily basis, that customer undoubtedly will pursue alternative service options. Heretofore, expansion of a coverage area was a business decision driven by various economic factors. The Commission, by its action, has usurped the role of the marketplace. It has placed non-nationwide paging operators at a competitive disadvantage to nationwide paging services which may continue to expand their systems with no regulatory impediments. Moreover, within the CCP/PCP community, licensees who like PNI, have elected to operate on shared PCP frequencies, are uniquely disadvantaged. No provision has been, or is proposed to be, made for them to obtain even minor license modifications during the pendency of this "interim" but time indeterminate, license freeze.

In light of the immediate problems generated by the freeze, not knowing how long it will last or what its short and long-term ramifications will be, it is virtually impossible for PNI to develop a thoughtful, strategic approach to the FCC's overall licensing proposal. With the disruption to day-to-day activities and a requirement to re-structure its business plans, PNI's management has found that it must deal with the short-term problems created by the Commission's ill-advised action. The longer term regulatory objectives, while a priority, cannot be assessed without knowing the relief to be granted and, equally critical, its timing. Depending on outcome of the Commission's interim

relief, PNI may have different opinions on the further licensing issues concerning the paging frequencies.

Accordingly, PNI reiterates that the Commission must **immediately** order, prior to its decision on the interim licensing proposal (1) the acceptance of applications for non-exclusive Private Carrier Paging ("PCP") channels which were submitted to the required frequency coordination committee prior to February 8, 1996 and (2) the acceptance of applications for modifications of existing systems and sites for licensed non-exclusive PCP channels authorized in the bands below 929 MHz.

C. Non-exclusive PCP Inquiry

In the Notice, the Commission inquired whether and when to use geographic licensing for the lower band PCP channels, which currently are licensed on a shared basis. Specifically, it requested comment on whether (1) to convert lower band shared PCP channels to exclusive use and implement geographic licensing, (2) issue only a certain number of licenses per shared channel and use competitive bidding to choose among mutually exclusive applications once the limit is reached, and (3) retain the status quo. PNI has extensive experience in attempting to consolidate operations on frequency 157.74 MHz in various markets and takes this opportunity to provide the Commission with its opinion in this matter.

II. Non-Exclusive PCP Lower Band Channel Licensing

A. Background

PNI is a "carrier's carrier". The company provides exclusively wholesale, as opposed to retail, paging services which it markets to retail paging providers. PNI makes

its state-of-the-art backbone network available to its carrier/customers who, in turn, sell service to their own subscriber/customers. From the carrier/customer's perspective, PNI's service provides a unique opportunity to utilize a technically advanced, highly efficient network yet retain his own subscriber base. The mutual advantages of this relationship are evidenced by PNI's success to date.

The Company's unique approach has also produced benefits from the FCC's perspective. PNI's network strategy makes extremely efficient use of the spectrum because PNI consolidates operations on the 157.74 MHz frequency in a market. In some instances, PNI actually acquires its customer's existing facilities and integrates them into its network. In others unnecessary facilities are abandoned in favor of the network.

In this service niche, PNI must be responsive to all its carrier/customers which are driven by their subscribers' needs. PNI selected 157.74 MHz for its carrier's carrier system specifically because the shared nature of the frequently permitted nationwide licensing. In choosing the frequency, PNI was aware that the facility of licensing on it was offset by the complexity of operating in a shared environment. Nevertheless, PNI willingly undertook the task of coordinating its operations with a multitude of co-channel licensees in metropolitan areas throughout the country, and already has succeeded in doing so in numerous markets.

Thus, PNI has unique, extensive experience in co-existing in a shared frequency environment. It is well qualified to provide the Commission with practical insight into the difficulties of transitioning from non-exclusive, extensively encumbered PCP channels to an exclusive use, geographic licensing framework. Moreover, PNI has a compelling

interest in seeing the FCC adopt a licensing approach that would permit the company to secure geographic exclusivity on this frequency, perhaps even on a nationwide basis. That opportunity would enhance the very substantial investment PNI has made in building out its network and consolidating licensees on the 157.74 MHz frequency. Nonetheless, it is PNI's recommendation that the Commission not adopt exclusive licensing in these bands. PNI, instead, urges the Commission to adopt a scheme similar to the one proposed by PCIA in its Petition for Rule Making filed in July 1994 as a balanced practically achievable approach.[3]

Like PCIA, PNI believes that the "shared" exclusivity should only be implemented on the two high-power PCP channels in the 150 MHz band and seven of the eight 460 MHz PCP channels. PNI suggests that no new licensees be permitted to apply for the non-exclusive PCP lower band frequencies in a geographic area when the channel is licensed to its efficiency peak. Such a cap should be based on the collective number of transmitters within a defined geographic area. Such areas should be the five regions used for narrowband PCS licensing purposes.[4] PNI also urges the Commission to mandate co-channel interference protection techniques as proposed by PCIA to permit the most efficient use of the spectrum among the shared users.

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[3] Petition for Rule Making filed by the Association of Private Carrier Paging Section of NABER, July 11, 1994

[4] See 47 C.F.R. § 24.102(b).

B. PNI's Consolidation Efforts

Based on a recent search of the FCC's database conducted by PNI, there are over 5500 call signs which grant authorization to operate on frequency 157.74 MHz. The number of actual paging transmitters authorized to operate on this frequency exceeds this figure substantially because many licenses authorize multiple base stations operating at various locations. Consequently, the landscape is cluttered with incumbent licensees. Moreover, unlike other "encumbered" services for which the FCC has proposed a migration from site-specific to geographic licensing, because these channels have been shared, these facilities have no defined "exclusive" service areas. Therefore, there typically are a number of facilities sharing a non-exclusive PCP frequency in a market with the paging transmitters being either co-located or the service areas overlapping.

PNI, a carrier's carrier, has been able to successfully implement its network strategy by consolidation of this complex tangle of licensed facilities. PNI efforts have been successful to date because it does not compete with incumbent licensees, i.e. PNI's customers, for the subscribers in a market. PNI provides its customers additional capacity and reduced costs in providing service to the customers' subscribers. As noted previously, PNI consolidates 157.74 MHz operations in a market by securing assignment of the incumbent licensee's FCC-authorized stations.

The response of co-channel PCP's efforts have been positive for the reasons described previously. Nevertheless, PNI has found that, in some cases, entities which operate internal, not-for-profit paging systems, particularly medical facilities, are unwilling to participate in PNI's network. These entities require pages to be sent

immediately; they are not prepared to accept even the minimal delays that can occur on a commercial network such as PNI's. In such cases, however, PNI has been able to relocate such entities to other paging frequencies, generally in the Special Emergency Radio Service, if the entity is a medical facility, or to a low-power 150 MHz PCP, or a 460 MHz frequency. PNI assists such entities in re-licensing their facilities, re-tuning their paging transmitters and shouldering the costs for such relocation, including engineering analysis.

PNI re-emphasizes that the reason for the cooperativeness of the licensees to PNI's consolidation rests on the principle that such licensee remains in business as a paging carrier, although not as an FCC licensee. The quality of service which the customer may provide its subscriber increases because of less congestion on the frequency and expanded coverage. Further, as part of a nationwide network, these incumbent licensees have more services to provide their customer. PNI is highly skeptical that a "exclusive overlay" licensee which may compete for the same subscribers as incumbent licensees would receive the same degree of cooperation which PNI has enjoyed.

PNI's ability to relocate other incumbent licensees to paging frequencies with similar operating parameters also has been a factor in PNI's success rate in operational consolidation in a market. PNI recognizes that the Commission has implemented or proposed implementing geographic licensing in other services where incumbent licensees existed and in some cases required mandatory relocation of the incumbents where the spectrum was more heavily encumbered. PNI does not believe that mandatory

relocation is appropriate or feasible for all the non-exclusive PCP channels because of the level of incumbency on the frequencies and the few channels which remain available for such relocation.

C. Imposition of a Licensing Cap

PNI certainly would encourage the Commission to transition the high-power 150 MHz PCP channels to exclusive licensing if there were a workable solution to achieve such exclusivity. Having carefully analyzed various methods which have been used to transition shared channels to exclusive use, PNI has concluded that these solutions will not be successful. Nonetheless, at a certain point, continued licensing of a shared channel within a specific geographic area must be discontinued, i.e., the FCC should impose a cap on the number of licensees which may operate on the frequency in an area. Service quality is affected not only by the total amount of traffic on a frequency, but on the number of individual systems contending to use the channel. When there are too many users on a channel, the service degrades for all and channel efficiency is significantly reduced. PNI, therefore, urges the Commission to implement this "shared" exclusivity[5] by capping the number of licensees that co-exist on a non-exclusive PCP channel within geographic areas.

By imposing a cap on the number of licensees which may operate on a shared channel within a geographic area, the Commission would ensure that the channel remains

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[5] In the Specialized Mobile Radio ("SMR"), the concept of shared exclusivity among licensees is found on the channels licensed for conventional use. A licensee does not acquire exclusive use of a channel unless a certain level of mobile loading is achieved. Should the level of loading be achieved by two or more entities on the channel, then the channel becomes "exclusive" among these licensees.

efficiently used. Additionally, all licensees sharing the channel in a geographic area have a defined landscape on which business plans may be developed and may be able to better coordinate the sharing of the channel among the users. The potential disadvantage is that an entity may not have a presence in a particular area prior to the cap. In such case, the entity would have to make a business decision as whether to forgo entry into the market or to acquire facilities from an incumbent licensee to develop its system. PNI submits that this entry decision should not be dictated by the Commission, but rather should be driven by the competitive market forces.

PNI encourages the Commission to select the five regions as set forth in the narrowband PCS rules as the appropriate geographic area for implementing "shared exclusivity". The Commission has already determined that expansive regions are the most appropriate geographic area to implement more efficient paging networks. Selection of geographic areas that are similar to areas used by the Commission in other services in which it has implemented geographic licensing may permit a future transition of the non-exclusive PCP frequencies should "shared exclusivity" reduce the number of incumbents on the channel.

Within the region at the time the licensees in such area collectively are authorized 500 transmitters and one licensee, independently, has licensed at least 70 transmitters in the area, no further licensing of the channel by non-incumbent licensees would accepted. Once the capping threshold is met, all licensees within the area would be accorded incumbent status, and would be permitted to license additional sites in the region with the caveat that each must cooperatively share the frequency with all parties licensed prior

to it in such areas. Such a licensing method would permit co-existence of incumbent licensees whether operating commercial or private systems.

D. Mandate Sharing Guidelines

PNI also agrees with PCIA that the Commission must mandate guidelines for co-channel sharing of frequencies to ensure continued efficient use of the spectrum, under the current rules when parties are unable to resolve sharing disputes voluntarily, a stand-off results with the channel too often rendered effectively unusable. Accordingly, PNI supports PCIA's proposal to prevent simultaneous seizure of shared channels ("key-up" overlap") between co-channel licensees in the same service area.[6] This service area should be smaller than areas defined for capping of licensing. PNI suggests that all co-channel licensees within a 37.5 mile radius would be required to meet the established interference guideline. Additionally, PNI also concurs with PCIA's suggestion that when three or more licensees are within such a service area, it will be necessary to have a common controller which will add the element of time sharing in order to provide an equitable division of airtime to each licensee. The cost of common controller must be allocated among the sharing licensees. Further, the time sharing arrangement should be based on the number of subscribers each licensee has or on the number of transmitters installed by each of licensee. The Commission, however, must codify these sharing

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[6] PCIA would require co-channel transmitters within a service area be equipped with properly configured controllers that are capable of exchanging pre-key up ("PTT") or request to transmit ("RTT") key ups and clear to transmit ("CTT") information for the purpose of placing such transmitter in busy wait state in order to prevent key-up overlap.

requirements rather than issuing them as a policy pronouncement to ensure compliance by all licensees.

III. Conclusion

The level of incumbent licensees which operate on the non-exclusive PCP channels on a shared basis dictates that geographic licensing on an "exclusive" basis will not be possible in the near future. PNI proposal for "shared exclusivity" may permit the Commission to revisit exclusive, geographic licensing in several years. Accordingly, PNI urges the Commission to immediately order relief to non-exclusive PCP licensees from the paging application "freeze" as they have been placed at a competitive disadvantage to licensees with CCP channels and 929 MHz PCP channels, and should, at a minimum, be given the ability to modify existing systems like these other paging licensees. Further, PNI submits that the interim licensing procedure should also permit status quo licensing of PCP frequencies, or in a manner similar to the scheme proposed in PNI's comment in the interim licensing procedure. Of utmost importance to PNI is expeditious action by the Commission to allow PNI and similarly situated licensees the ability to continue their businesses.

Respectfully submitted,

PREFERRED NETWORKS, INC.

By: _____

Elizabeth R. Sachs
Terry J. Romine
Lukas McGowan Nace & Gutierrez, Chartered
1111 Nineteenth Street, N.W., Suite 1200
Washington, D.C. 20036
(202) 857-3500

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